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C08-00673

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CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELANDUNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION - CLEVELAND

IN RE:
Eric M McCrann
Amy N McCrann
AKA Amy Nicole Holcomb
Debtors

) CASE NO. 08-11888
)
) CHAPTER 7
) JUDGE Pat E. Morgenstern-Clarren
) MOTION OF CAB EAST LLC FOR RELIEF
) FROM STAY AND ABANDONMENT
)
) PROPERTY:
) ** 2006 Ford Explorer
) VIN#1FMEU74E26UA76289
)

CAB EAST LLC (the "Movant") moves this Court, under §§ 361, 362, 363, 554 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001, 6007 and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules) for an Order conditioning, modifying or dissolving the automatic stay imposed by § 362 of the Bankruptcy Code and for abandonment of the property under § 554 of the Bankruptcy Code. In support of this Motion, the Movant states:

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28

U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. On February 20, 2006 the Debtor listed above (collectively, the "Debtor") entered into an **Executory Contract** for the lease of a 2006 Ford Explorer VIN#1FMEU74E26UA76289 ("Vehicle" herein) with Mike Bass Ford Inc. The total payments due under the lease, pursuant to its terms, were \$32,487.64. The **Executory Contract** was evidenced by an Ohio **Motor Vehicle Lease Agreement** dated February 20, 2006, (the "Lease"), a copy of which is attached as Exhibit A.

3. To secure payment of the Lease Agreement and performance of the other terms contained in it, the Debtor executed a **Lease Agreement dated February 20, 2006, (the "Lease Agreement")**.

4. Article 4 of the Standardized Forms does not apply to leased vehicles as it refers to Security Agreement and perfection thereof.

5. The Lease was transferred as follows: As is set forth in Exhibit A, the Lease was assigned from Mike Bass Ford Inc. to CAB EAST LLC.

6. The value of the Vehicle is \$18,100.00. This valuation is based on the N.A.D.A. Book Value.

7. As of the date of this Motion, there is currently due and owing on the **Lease** the outstanding balance of \$20,613.48.

Said balance represents remaining payments due under the lease and a Purchase Option of \$16,957.50.

8. Other parties known to have an interest in the Vehicle are: HTD Leasing LLC

9. The Movant is entitled to relief from the automatic stay under §§ 362(d)(1) and/or 362(d)(2) for these reason(s):

Debtor has no equity in the Vehicle, as it is a leased vehicle and the Vehicle is not needed by the Debtor for its reorganization.

Debtor has failed to provide adequate protection for the lien held by the Movant for the reasons set forth below.

The within bankruptcy case was filed on March 19, 2008. The initial 341 meeting was set for April 24, 2008. Since the filing of the case, debtor has failed to perform their intention within the 30 days since the initial 341 meeting date as required by 11 U.S.C. §§362 (h) and 521 (a) (2) (B).

10. Movant has completed the worksheet attached as Exhibit C.

11. This Motion conforms to the standard form adopted in this District except as follows: This form has been modified to accommodate a vehicle lease.

WHEREFORE, Movant prays for an Order from the Court granting Movant relief from the automatic stay of § 362 of the Bankruptcy Code to permit Movant to proceed under law and for such other and further relief to which the Movant may be entitled. **Movant further prays for an Order from this Court, authorizing and directing the Trustee to abandon the Vehicle pursuant to Section 554 of the Bankruptcy Code.**

Respectfully submitted,

/s/ Cynthia A. Jeffrey
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Attorneys for Movant

CERTIFICATE OF SERVICE

I certify that on May 27, 2008, copies of this Motion for Relief from the Automatic Stay were served on the following registered CM/ECF participants, electronically through the Court's transmission facilities at their email addresses listed on the COURTS ELECTRONIC MAIL NOTICE LIST.

1. Office of the U.S. Trustee
Served via: (registered address)@usdoj.gov
2. Waldemar J Wojcik, Trustee
Served via: wwojcik@epitrustee.com
3. William Balena, Esq.
Served via: bbalena@mac.com

I hereby certify that the following were served by mailing on May 27, 2008 the same by ordinary U.S. mail, postage prepaid, to the persons listed below:

1. Eric M McCrann
Amy N McCrann, Debtor
13417 Whitehead Rd.
LaGrange, Ohio 44050
2. HTD Leasing LLC
260 Interstate N Circle NW
Atlanta, GA 30339

/s/ Cynthia A. Jeffrey

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